

AN ORDINANCE

2006-03-30-0424

**DEFINING THE TERMS OF THE CITY'S CONSENT TO ASSIGNMENT
OF THE QUIZNO'S LEASE IN THE ST. MARY'S STREET GARAGE
LOCATED IN DISTRICT 1.**

* * * * *

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager and her designee are authorized and directed to execute and deliver a Consent to Assignment and Assumption of Lease substantially in the form attached hereto as **Attachment I**, which is incorporated herein by reference for all purposes as if it were fully set forth. The City Manager and her designee should take all other actions reasonably necessary or convenient to effectuate the transaction described in Attachment I, including agreeing to non-material changes to its terms.

SECTION 2. The proceeds of this Lease will be deposited into Fund 11001000 entitled, "General Fund, Internal Order 224000000002, entitled "License Agreements-Use of ROW," and General Ledger Account 4202410, entitled "License Agreements In ROW."

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

SECTION 4. This ordinance becomes effective April 9, 2006.

PASSED AND APPROVED this 30th day of March 2006.



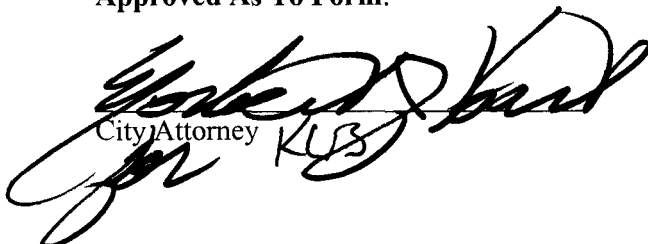
M A Y O R

PHIL HARDBERGER

Attest:


City Clerk

Approved As To Form:


City Attorney KUS

Agenda Voting Results

Name: 12.

Date: 03/30/06

Time: 09:38:03 AM

Vote Type: Multiple selection

Description: An Ordinance defining the terms of the City's consent to assignment of the Quizno's lease in the St. Mary's Street Garage located in District 1. [Presented by Shawn Eddy, Interim Director, Asset Management; Erik J. Walsh, Assistant City Manager]

Voter	Group	Status	Yes	No	Abstain
ROGER O. FLORES	DISTRICT 1		x		
SHEILA D. MCNEIL	DISTRICT 2		x		
ROLAND GUTIERREZ	DISTRICT 3		x		
RICHARD PEREZ	DISTRICT 4		x		
PATTI RADLE	DISTRICT 5		x		
DELICIA HERRERA	DISTRICT 6		x		
ELENA K. GUAJARDO	DISTRICT 7		x		
ART A. HALL	DISTRICT 8		x		
KEVIN A. WOLFF	DISTRICT 9		x		
CHIP HAASS	DISTRICT_10		x		
MAYOR PHIL HARDBERGER	MAYOR		x		

Attachment I

Consent to Assignment of Lease Agreement **(Quiznos, St. Mary's Street Garage)**

This Consent to Assignment of Lease Agreement is entered into among the City of San Antonio (Landlord) and the Assignee and Assignor designated below.

Predicate Facts

Assignor is the tenant under the below described Lease, and Landlord is the landlord.

Assignor wishes to assign the leasehold to Assignee, and Landlord consents to the Assignment on the terms and conditions of this instrument.

Rights and Obligations

Now Therefore, in consideration of the premises, the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Identifying Information.

Lease:	Lease Agreement, St. Mary's Street Garage—Retail space, Tenant: Quiznos Classic Subs relating to approximately 1,742 square feet of gross leaseable floor area and authorized by the Ordinance Authorizing Lease
Assignor:	JMR Development, Inc.
Assignor's Address:	30427 Saddleridge Dr., Bulverde, Texas 78163
Assignee:	Too Q'd, L.L.C.
Assignee's Address:	22227 Midbury, San Antonio, Texas 78259
Ordinance Authorizing Lease (No. & Date):	96704, dated November 14, 2002
Guarantors of Lease:	Marion Schaefer, Robbie Schaefer, Eric Luetter
Ordinance Authorizing Assignment:	

2. Defined Terms.

All terms defined in the Lease and not otherwise defined in this Consent to Assignment, when used in this instrument, have the meanings ascribed to them in the Lease.

3. Consent.

Landlord consents to the assignment contemplated by this agreement, but this consent is dependent on the other terms of this agreement.

4. Release of Liability.

JMR Development, Inc., James M. Boyle, Michael W. Easterling, and Rob W. Wilburn are released of liability under the Lease relating to the period after assignment. They are not released of liability relating to the period before the assignment.

5. Additional Guarantors.

At the execution of this consent, Marion Schaefer owns 100% of the membership interest in Assignee. Within 30 days after any person acquires any class of membership interest in Assignee, Assignee must notify Landlord in writing of the acquisition, the identity of the new member, the class of membership interest, and the ownership percentage of the new member in the relevant membership class. Any person owning 20% or more of any class of membership in the Assignee must sign a guaranty of the tenant's obligations under this lease in a form satisfactory to the City Attorney. Failure of any such person to sign such a guaranty promptly upon request is a default under the Lease. Failure of the Assignee to timely notify Landlord of the acquisition of an interest subject to this paragraph is likewise a default under the Lease.

6. Increased Security Deposit.

At present, Landlord holds a \$3,000 security deposit under the Lease. Before this consent takes effect, Assignee must deposit with Landlord an additional \$3,000 to add to the security deposit. This money will be held and disbursed according to the Lease's directions for security deposits. Assignee and Assignor must adjust between themselves any claims arising from Landlord's retention of the previously posted security deposit.

7. No Default--Tenant.

As a part of the inducement to Landlord to execute and deliver this consent, Assignor represents to Landlord and Assignee that:

- a. The Lease is in full force and effect according to its terms.
- b. Landlord is not in default under the Lease.
- c. Assignor has no offset or claim against Landlord that would reduce or impair the tenant's obligations to under the Lease.

8. No Default—Landlord.

As a part of the inducement to Assignee to execute and deliver this consent, Landlord represents to Assignor and Assignee that:

- a. The Lease is in full force and effect according to its terms.
- b. Assignor is not in default under the Lease.
- c. Landlord has no offset or claim against Assignor that would reduce or impair Landlord's obligations under the Lease.

9. Assumption of Lease.

Assignee attorns to Landlord and assumes all liabilities of the tenant under the Lease, whether relating to the period before assignment or after. Landlord may hereafter deal with Assignee as

if it were the original tenant under the Lease, and Assignee will have no rights or defenses not available to the Assignor as to matters relating to the period before the assignment.

10. Scope of Agreement.

This instrument defines the rights and obligations of Landlord as against Assignor, Assignee, and the Guarantors of Lease. As between themselves, Assignor, Assignee, and the Guarantors of Lease may define the rights and obligations between themselves differently.

11. Same Terms and Conditions.

This Consent to Assignment is a fully integrated statement of the modifications to the Lease. Except as expressly modified by this consent, the Lease remains a comprehensive statement of the rights and obligations of Landlord, Assignor, and Assignee under the Lease. Landlord, Assignor, Assignee, and the Guarantors of Lease reaffirm the Lease, as modified by this consent.

In Witness Whereof, the parties have hereunto caused their representatives to set their hands.

Landlord:

City of San Antonio, a Texas municipal corporation

By: _____

Printed
Name: _____

Title: _____

Date: _____

Assignor:

JMR Development, Inc.

By: _____

Printed
Name: _____

Title: _____

Date: _____

Assignee:

Too Q'd, L.L.C..

By: _____

Marion Schaefer
Sole Member

Date: _____

Guarantors of Lease:

Marion Schaefer

Date: _____

Robbie Schaefer

Date: _____

Attest:

City Clerk

Eric Luetke

Date: _____

Approved as to Form:

City Attorney